

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8**

BEN VENUE LABORATORIES, INC.¹

Employer	and	Case
No. 8-RC-15910INTERNATIONAL CHEMICAL WORKERS UNION COUNCIL/UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION²		

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

¹ The Employer's name appears as amended at the hearing.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees including those engaged in packaging, sterile room, lyophilization, formulations, bottle wash, sanitation, sealing, shipping and receiving, warehouse and prep lab, excluding all maintenance/engineering employees, all technical employees including those engaged in documentation, quality control group, validation, purchasing, microbiology–environmental control, materials management, product development (PPD), metrology, quality assurance and component control, clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer is a Delaware Corporation with an office and place of business located at 300 Northfield Road, Bedford, Ohio where it is engaged in the manufacture, distribution and sale of drugs. There are approximately 300 employees in the unit found appropriate herein.

The Petitioner seeks a unit of production employees which it refers to as the “doers.” These are roughly the employees of the Employer who are directly engaged in the manufacture of the product. There is no dispute between the parties regarding their inclusion in the proposed unit. The Employer, however, maintains that such a unit is too narrowly drawn and must, to be appropriate under Board principles, include employees engaged in maintenance and technical and administrative classifications. The Petitioner would exclude, and the Employer would include, job classifications in the following areas: documentation, quality control group, process validation, maintenance and engineering, purchasing, microbiologist-environmental control, materials management, products development (PPD) and metrology. In the Petitioner’s parlance, these classifications are the “overseers.”

² The Petitioner’s name appears as amended at the hearing.

A threshold issue raised by the Employer at the hearing is the weight to be accorded the unit description set forth in the Decision and Direction of Election in Case No. 8-RC-14955. In the latter case, the same parties involved herein stipulated to a unit that included all of the job classifications that the Petitioner now seeks to exclude except for those in documentation. I ultimately determined that the documentation employees should be included in the unit found appropriate therein. The Employer presently maintains, given its claim that nothing has changed in the interim period, that the parties are bound by the unit determinations in that case. The Petitioner disputes this argument stating that the prior Decision has no precedential value.

In determining the appropriateness of a petitioned-for unit, the Board does not consider itself bound by a collective bargaining history resulting from a consent election conducted pursuant to a unit stipulated by the parties rather than one determined by the Board. **Mid-West Abrasive Co.**, 145 NLRB 1665 (1964). As indicated above, the unit found appropriate in 8-RC-14955 was based on a stipulation between the parties except for one classification. Accordingly, the unit found appropriate in Case No. 8-RC-14955 is not binding on me in determining whether the petitioned-for unit is appropriate in the instant matter. Nevertheless, in the prior case a determination was made with respect to the inclusion of the documentation employees. In examining the status of that classification within the context of the instant petition, I shall accord whatever weight is warranted to my factual and legal findings in the prior case.

A second threshold issue raised by the Employer concerns its argument that the petition runs afoul of Section 9(c)(5) of the Act. Specifically, the Employer maintains that the Union has more narrowly drawn the petitioned-for unit in the instant case to fit its extent of organization among the employees of the Employer. At hearing, I affirmed the ruling of the Hearing Officer barring the introduction of certain evidence by the Employer concerning the Petitioner's extent

of organization. I hereby reiterate my finding that whether the petitioner's interest in seeking the instant unit turns in part on its extent of organization is immaterial so long as the Board, in its determination as to the appropriateness of the unit, does not give controlling weight to that fact. **Stern's Paramus, 150 NLRB 799, 807 (1965)**. While the statute forbids the Board to make extent of organization controlling, it does not forbid a union to seek a particular unit that is otherwise appropriate. **Overnite Transportation, 322 NLRB 723, 725 (1996)**.

In support of its position, the Petitioner notes that the Employer has itself established four separate groups of hourly employees, for wage grade purposes, which are classified as either, "production," (P), "administrative/clerical," (A), "technical," (T) or "maintenance and engineering" (M). According to the Petitioner, the unit it seeks includes all those employees that the Employer has classified as P for production and excludes all those labeled otherwise.³ Thus, the Petitioner maintains, its proposed unit merely follows wage groupings already established by the Employer.

These groupings, moreover, are separated by more than wage rates. The record indicates that all "P" employees work on the first floor of the facility's North and South buildings. Most if not all "A" and "T" employees, work out of offices on Third South and Second North. The M employees have a separate shop in back of the North and South buildings. Thus, there is a physical separation of production employees from the others.

³ The Petitioner's Exhibit 42, which was created by Beverly Welsh, the Employer's Director of Human Resources, identifies each job class and its placement within one of the four wage grade classifications. It also identifies whether the specific class is included or excluded in the Petitioner's proposed unit. The Employer placed one "P" classification, "waste material handler," in the excluded column. The Petitioner asserts that this was an error and that that classification should be included in the unit. Likewise, the Employer placed three non-P classifications in the included column which the Petitioner disputes. It asserts that these classifications should be excluded. See footnote 14 below.

For its part, the Employer emphasizes that that all four groupings of its employees that are at issue herein share a number of common employment conditions. As indicated above, they are all paid on an hourly basis. Furthermore, there is no dispute that they punch a time clock, are subject to the policies of the same employee handbook, receive similar new employee and safety training, and receive the same employee benefits. The evidence also shows that all these employees are subject to the same bid procedure and that a number of non-“P” employees started off in the “P” grouping.

In arguing for a broader unit, the Employer places special emphasis on what it deems a highly integrated production process. It notes that as a pharmaceutical company, it is subject to a significant degree of government regulation. As a result, its production process must meet a strict standard of quality control. At the heart of the process is the batch record, a document that facilitates quality control and requires input from employees in the groups the Petitioner seeks to include as well as those it would exclude.

For the Petitioner, the batch record itself is not reflective of an integrated production process. The Petitioner maintains that a review of each classification the Employer seeks to include demonstrates a lack of community of interest regardless of whether that group makes entries on the batch record.

In order to determine the unit placement of the disputed job classifications, it is necessary to separately examine each of them. The discussion below will review these job classes focusing on the three general employee groupings used by the Employer which are at issue herein: technical, maintenance and administrative.

THE “T” EMPLOYEES

1. Quality Control Department

The Employer stresses the importance of quality control in its production process because of tight FDA regulation. The function of the Quality Control Department, according to the Employer, is to perform routine and regulated tests on both raw materials and products as they pass through the various stages of the production process. The employees who perform these tests are quality control chemists and quality control lab technicians. They record their results on the batch records and if the product does not meet strict standards, the manufacturing process is stopped.

The chemists employed in the quality control department are required to have four-year science-related college degrees as well as some prior laboratory experience. The lab technicians must have an Associate’s Degree in science with chemistry coursework or two years of equivalent study in college. The chemists independently sample and test materials, products and components. The lab technicians perform tests on water involved in the production process and they sample raw materials and final products.

According to the Employer, the quality control employees “interface” with other employees in order to obtain complete information, conduct tests and complete the batch record process. Nevertheless, the record does not reflect either regular or routine contact or interchange between employees of this department and others. The interface spoken of by the Employer is largely a matter of the quality control employees placing entries into batch records that also independently receive data from other employees such as those in the warehouse.

The evidence suggests that quality control employees spend much of their time in the laboratory although they, at times, perform tests on certain machines. The laboratory is located

in the South Complex on the third floor, an area remote from where production takes place. Their work tasks are typical of laboratory work and, unlike production work, involve little in the way of significant manual labor. While most other employees in the facility wear work uniforms, members of the quality control department generally wear lab coats over their street clothes.

Quality control employees do not share supervision with any production employees. According to the Employer's organization chart, the Manager of the Quality Control Department answers to the Director of Regulatory Affairs who in turn reports to the President and CEO.

2. Process Validation

Process validation includes the job positions of Media Fill Coordinator, Physical Monitoring Technician and Process Validation Specialist. These employees perform routine and standardized tests to monitor the environment for contaminants primarily in the production areas known as the Sterile Filling Rooms. If unacceptable levels of contamination are discovered, these employees can recommend a halt in production until the problem is resolved. Cleanup may involve use of employees from Housekeeping and Sanitation, areas that the Petitioner seeks to include.

Validation employees do not share supervision with production employees. The Manager of Process Validation answers to the Director of Quality Operations who in turn reports to the President and CEO. The Media Fill Coordinator and the Physical Monitoring Technician positions require either a science-related Associate's Degree or two years of equivalent college education. A four-year degree in an engineering-related discipline is required of the Process Validation Specialist. While the former positions do not appear to require any significant manual labor normally associated with production, the latter classification may involve some lifting, up

to 60 lbs. during equipment repairs. Employees in this department wear uniforms but of a different color than those of the production staff.

Validation employees work out of an office located on the second floor of the South Complex, an area separated from the production lines. The Employer insists that these employees work “side by side” with certain employees included in the unit sought by the Petitioner. Evidence discloses that if a production employee is found to be contaminated, he or she cannot return to work until validated by a Validation employee. In general, however, the record does not demonstrate any frequent or regular contact between Validation employees and others. Indeed, production employees who testified for the Petitioner maintained, without contradiction, that they had little or no contact with Validation employees.

3. Environmental Control

Included in the Environmental Control Department are the Environmental Monitoring Technicians, Microbiologists, Microbiologists/LAL and the Environmental Action Coordinator. According to Beverly Welsh, the primary function of this department is to insure that the sterile filling areas are free from microbiology contamination. They also test the final product to assure no microbiology taint. The Microbiologist/LAL performs a specific kind of testing to assure that there is nothing in the product that would cause illness.

The Manager of Environmental Control, like the of Quality Control Manager, reports to the Director of Regulatory Affairs who in turn reports to the President and CEO. Thus, there is no shared supervision between this department and production. Most of the employees in Environmental Control work out of an office on the second floor of the North Complex that is not located in a production area. They wear uniforms at work but of a different color than those worn by production employees.

In terms of educational requirements, the Environmental Monitoring Technicians must have a minimum of two years of a science-related curriculum with some microbiology coursework. They are also required to have basic computer skills including familiarity with word processing and database programs. The other positions in the department require four-year college degrees with coursework or a major in microbiology or biology. For the Environmental Action Coordinator, there is a requirement that he or she have two years of extensive laboratory experience in an FDA-regulated pharmaceutical microbiology laboratory and a background in statistics.

As with the Validation employees, the Employer asserts that members of the Environmental Control Department work “alongside” production employees. The Employer makes reference to the testimony of production employee Chris Miklovic who stated that while he currently has no contact with Environmental employees at his job in the Sterilization unit, he previously experienced regular swabbing for contamination by microbiologists when he worked in the Fill Room. This swabbing operation is not elaborated in the record and therefore it is unclear whether it involved anything more than a process that entailed little or no communication between employees. The record also fails to indicate that there is any other significant interaction between Environmental employees and production employees.

Job descriptions used by the Employer for Environmental employees indicate that they do not engage in any extensive manual labor akin to production work. There is, however, an “occasional” need, according to the descriptions, to lift up to 50 lbs.

4. Quality Assurance

The job classifications in this department are Quality Assurance Auditor and Component Control Inspectors. Initially the Petitioner sought to have these job classes included in the

proposed unit. However, at hearing, it amended the petition to exclude them. According to Beverly Welsh, the Quality Assurance Auditors work in production areas such as the Sterile Filling Rooms ensuring that federally regulated standard operating procedures are followed. The Component Control Inspectors perform the same function in the Packaging Department. If they find anything out of the ordinary, Quality Assurance employees report it to their supervisors. Aside from being in some physical proximity to employees in the petitioned-for unit, there is a lack of evidence in the record regarding the interaction between the auditors and production employees.

On the Employer's organizational chart, the Quality Assurance Department is grouped with Process Validation and Documentation under the aegis of the Associate Director of Quality Operations. The latter answers directly to the President and CEO. Thus this department does not share common supervision with production.

Job descriptions for Quality Assurance were not made part of the record. It is therefore unclear whether these employees engage in job tasks that are similar to those performed by production. Beverly Welsh suggested that Component Control Auditors do not engage in any serious lifting on the job. The record also does not indicate if Component Control Inspectors are required to have any post-secondary education or meet other specialized experience needs. Welsh testified, however, that four-year college degrees are required for Quality Assurance Auditors.

Discussion

The Board has held that a petitioned-for unit need only be *an* appropriate unit for purposes of collective bargaining, not the most appropriate. **Overnite Transportation, supra; Omni International Hotel, 283 NLRB 475 (1987).** It has further held that, in representation

proceedings, the unit sought by the petitioner is always a relevant consideration. **E.H. Koester Bakery & Co., 136 NLRB 1006 (1962)**. Indeed, in **Lundy Packing Company, Inc., 314 NLRB 1042, 1043 (1994)**, the Board went one step further and refused to include technical employees in a production and maintenance unit because they did not share a sufficient community of interest with the petitioned-for production and maintenance employees so as to mandate their inclusion in the unit over the petitioners' objections. In determining whether the instant Employer's above-described "T" employees should be included in the petitioned-for unit, I shall be guided by these standards.

Record evidence indicates that there are certain common conditions shared by the "T" and "P" employees. As indicated above, they are subject to the same employment handbook and receive the same benefit package. Both groups also are paid hourly, punch a time clock and receive the same new employee and safety training. They are subject to a common job bidding procedure and evidence demonstrates that a number of the "T" employees came from the ranks of the production workers. These are notable areas of commonality.

Nevertheless, there are significant differences between the two groups.⁴ First the nature of the work done by the "T" employees is quite different in that it is primarily intellectual with only a minimal amount of physical activity. While lifting is a common feature of production work, for example, "T" employees engage in it only on an occasional basis or not at all. The intellectual nature of the work is also reflected in the educational requirements for "T" positions. Many of these job classifications require a four-year science-related college degree. Most if not

⁴ The record does not include the specific wage rates earned by each job classification. Rather, the Employer prepared an exhibit that compares wage rates by ratio using a base rate of 1.00. Therefore, I can only draw relative conclusions as to wage comparisons that may not be of any significant value. Thus, I note that ratios for "P" employees range from .93 to 1.43 while "T" employees earn between 1.03 and

all of the other classifications call for some college training in the sciences, usually two years of study.⁵ There are no college education requirements for production employees.

There also appears to be little interaction between production workers and the “T” employees. They are separately supervised and found in different chains of command on the Employer’s organization chart. Their home bases are located in separate areas of the Employer’s facility. Many of the “T” employees do the majority of their work in laboratories. While others perform tasks in production areas, the record does not establish that they engage in significant interaction with production employees. Certainly there is no evidence that production workers do any of the tasks of “T” employees or vice-versa.

Most of the “T” employees are engaged in monitoring aspects of production and also assuring adherence to standard operating procedures. Noncompliance, when it is discovered, must be reported to supervisors. Thus, while there is no claim or suggestion that “T” employees are supervisors within the meaning of the Act, evidence indicates that they are responsible for reporting lapses, errors and other forms of noncompliance by production workers. The absence of evidence that production workers are disciplined as a result does not dispel the notion that there is a distinct difference in duties between the production and the “T” employees.⁶

1.82. Furthermore, the exhibit indicates that the “T” job classes are generally better paid but there are indeed a number of “P” classifications that earn more than certain “T” employees.

⁵ The Petitioner has suggested in its brief that the “T” employees, due to their college training and some independent work that they allegedly perform, may be professional employees within the meaning of the Act. It did not, however, fully explore this matter at hearing or seriously develop the issue in its brief. For its part, the Employer argues at length in its brief that these employees as well as those in the metrology classification are not professionals within the meaning of the Act. I find that neither party adequately developed the record on this issue and, therefore, a conclusion regarding professional status cannot definitively be drawn. I note, however, that should the Board disagree on review and include these employees it would likely entail reopening the record to receive additional evidence regarding the professional status of these employees in order to determine whether a Sonotone election is necessary.

⁶ The parties explored certain other factors at hearing but the evidence was inconclusive. Except for the chemists who wear lab coats over street clothes, the “T” employees wear uniforms like those used by production employees. Their uniforms, however, are of a different color. Both groups of employees have

It is not uncommon for the Board to include quality control employees and other technical-oriented positions in a production and maintenance bargaining unit when a union has requested them. Nevertheless, as identified above, there are notable differences between these groups in this case and a marked lack of significant interaction.⁷ Since no labor organization seeks to represent a broader unit which includes the “T” employees, I conclude that the employees engaged in quality control, quality assurance, environmental control and process validation do not share such a community of interest as to require their inclusion in the petitioned-for production unit. See, **Lundy Packing Company, Inc., supra; Penn Color, 249 NLRB 1117 (1980).**

THE “M” EMPLOYEES

1. Facilities Maintenance Department

The job classifications at issue in the Facilities Maintenance Department are Facilities Maintenance Assistant, Painter, HVAC Maintenance Mechanic, Senior Electrician,⁸ Plant Electrician and Senior Technician HVAC.

The Facilities Maintenance Assistant works under and assists the Facilities Maintenance Manager in maintaining the physical plant. This position has the lowest wage level for an “M” employee which nevertheless is 114% of the base and significantly more than the levels for most

work breaks of the same length but there is evidence that some “T” employees take them at their own discretion. Lunchrooms are open to all employees. Nevertheless, some evidence was adduced to show that conflicts have arisen wherein production employees were temporarily barred from a particular lunchroom. Finally, evidence indicates that some “T” employees may use some of the same locker rooms used by production employees. The net effect of the evidence on these issues is that it is inconclusive and does not weigh in favor of either party’s arguments.

⁷ Although the Employer claims significant interaction because employees in both groups are involved in the batch record process, this type of interaction alone does not support a finding of a community of interest.

⁸ The job description for the Senior Electrician lists him or her as being supervised by the “manager of Plant Facilities,” a position that does not exist on the organizational chart. I have presumed, based on the

“P” employees. Requirements for this job include completion of courses leading to full certification in HVAC or electrical technician within three years after hire date. The tasks assigned to this classification are performed in both production and office settings.

Painters do essentially what their name implies although they may also apply wallcoverings. They are required to have a high school diploma or be trade or vocational school graduates with three years of experience as painters or three to five years experience as a painter’s helper. This position earns 121% of the base pay level.

The job description for HVAC Maintenance Mechanic designates this employee as responsible for repair, trouble shooting, installation, preventive maintenance, and operation of all equipment in the facility. Thus, he or she performs maintenance on refrigeration systems, air handlers, pumps, boilers, water softeners, cooling towers, hot water systems, sterilizers, ovens, tray washers, and acid clean boilers and stills. Job requirements include 18 months of HVAC certification beyond high school with two years of commercial/industrial HVAC work experience. This job also requires refrigeration and electrical troubleshooting and occasionally involves heavy lifting. It earns 143% of the base pay level which is significantly more than every “P” wage level except for one.

Like the other Facilities Maintenance Department employees, the Senior Electrician and the Plant Electrician work under the supervision of the Facilities Maintenance Manager. The Plant Electrician is responsible for the installation, troubleshooting and repair of a number of equipment systems including freeze dryers, air handlers, dehumidifiers, emergency generator and transfer switches, and telephones and computers. Preventive maintenance is also performed by

record and a reasonable interpretation thereof, that this position is in the same department as the plant electrician.

this position. The record does not reflect the requirements to hold this job. The Plant Electrician receives a minimum of 143% of the base pay level.

The Senior Electrician installs and repairs electrical equipment. He or she also diagnoses problems and performs preventive maintenance. The Senior Electrician must be willing to work any shift and is on-call 24 hours a day through a beeper. He or she receives a minimum pay level of 150% of base.

The Senior Technician HVAC is a highly skilled position that is charged with taking the initiative to improve the operation and efficiency of the Maintenance Department. This person performs work on all equipment and facilities systems and engages in preventive maintenance. He or she trains HVAC Maintenance Mechanics and assists or substitutes for the group leader. Also, he or she may be scheduled to work any shift, carry a beeper and be prepared to work on an on-call basis. The minimum rate of pay for this position is 150% of the base and exceeds the ratios for all “P” employees.

2. LYO Maintenance Department

As is the case with Facilities Maintenance, the LYO Maintenance Department has its own manager who answers to the Director of Maintenance and Engineering. The chain of command in the Employer’s organizational chart for these departments does not merge with production until the next level, with the Vice-President of Operations.

The record has scant evidence regarding the specific positions in the LYO Maintenance Department. It does, however, include a job description for Junior HVAC Mechanic. This employee performs maintenance on freeze dryers while working with certified technicians, and, over the period of one year, must acquire sufficient knowledge to maintain the freeze dryers

without assistance from other LYO technicians. The Junior HVAC Mechanic carries a beeper for on-call purposes. He or she earns a minimum of 128% of the base pay level.

3. Metrology

The job positions in Metrology at issue herein are Electronic Technician and Metrology Senior Technician.⁹ These employees are primarily responsible for calibrating equipment and instruments. They are included in the same department with production maintenance employees. Their supervisor answers to the Director of Maintenance and Engineering. These employees must be available on a 24-hour basis to be called in.

The job requirements for Electronic Technician do not appear in the record except for Welsh's statement that they do not need a four-year college degree. According to the job description, this position performs calibrating "per SOP without variation." He or she handles the calibration and operation procedures for production, quality control, microbiology project development, component control validation and other equipment. Also, this technician assists production maintenance employees on the repair of sensors, controllers and temperature instruments. He or she is directed to coordinate work activity so as not to interfere with production or other departments' activities. The Electronic Technician receives a minimum pay level of 136% of the base.

The Metrology Senior Technician performs much of the same duties of the Electronic Technician and more. He or she trains junior metrology technicians. The position requires writing and reviewing standard operating procedures. He or she also coordinates job duties so as to minimize the effect on production schedules. The Metrology Senior Technician is paid a minimum of 150 % of the base level.

⁹ There is also a group leader position in metrology but the record contains little information on it.

These job descriptions suggest that metrology employees primarily perform their work in production areas when the lines are not operational. Thus, contact with production workers would be minimal. This conclusion was confirmed by production workers who testified at the hearing that they did not have contact with metrology except when a machine broke down. While the record suggests that the primary duty of this sub-department is technical in nature, the Employer requires the metrology employees to engage in equipment repairs and maintenance and considers them to be maintenance employees.

4. Production Maintenance

The other part of the Metrology and Production Maintenance Department involves Production Maintenance. The positions in this department include Production Maintenance Mechanic, Group Leader and Senior Technician Mechanic.

According to the job description, the Production Maintenance Mechanic maintains and troubleshoots problems with any equipment used in the production process. He or she completes preventive maintenance, does repairs, installs parts for filling equipment and knows how to make adjustments to the lines “so that the day’s scheduled run can be completed without trouble.” A job posting for this position indicates that applicants must have two years experience working on production equipment with knowledge of electronic controls. Fabrication skills are also valued. The minimum pay for this position is 136% of the base.

The Group Leader for Production Maintenance, according to the job description, does the same work as a production mechanic but also fills out daily time reports, substitutes for the supervisor, trains and assigns work for other department employees, orders parts or fabricates them and provides instruction on quality work. He or she wears a beeper and is paged to perform emergency work. The Group Leader receives minimum pay of 136% of the base.

The Senior Technician Mechanic in Production Maintenance performs much of the same duties as the Production Maintenance Mechanic but also; 1) designs, engineers, fabricates and installs improvements and modifications to the equipment, 2) selects and installs the correct parts for the filling equipment, and 3) makes adjustments to the lines to assure that the scheduled runs start without trouble. The record suggests that this position receives a minimum pay level of 150% of the base.¹⁰

Discussion

With respect to the “M” employees described above, I am again guided by the principle that the unit found appropriate herein need only be *an* appropriate unit and not the most appropriate. I am mindful that it is rare for a petitioner to seek a production unit that excludes maintenance employees. Nevertheless, this does not mean that a production only unit would, of necessity, be inappropriate. The question to be decided is whether the “M” employees have a sufficient degree of community of interest with the “P” employees as to mandate their inclusion in a single unit.

As is the case with the “T” employees, there are certain common characteristics shared by the “P” and the “M” employees. They are hourly employees who receive the same employee benefits. They punch a time clock and receive certain common training programs. In addition, they are subject to the same employment policy handbook. “P” and “M” employees may use the same lunchrooms and locker rooms although that is not entirely clear from the record.

There are, however, significant differences between these groups. First, the “M” employees do not share direct common supervision with the “P” employees. While they fall under the aegis of the Vice-President for Operations, “M” employees are separately organized in

¹⁰ The designation on the exhibit referring to this position seems to be “Sr Mechanic Prod Mte.”

the Maintenance and Engineering Department. The only overlap that occurs in supervision concerns the “P” employees who work in Housekeeping and Sanitation. The latter are grouped within the Facilities Maintenance sub-department that is led by the Facilities Maintenance Manager. However, the record also establishes that Housing and Sanitation has its own supervisor, Kathy Evans. There is no indication on the record that Evans supervises any “M” employees.¹¹

While “M” employees are not required to have completed college coursework, they nevertheless, for the most part, are skilled craft employees with some specialized training or experience. These employees could not engage in the installation, repair and maintenance of the Employer’s equipment, machines and instruments without such training. Even the lowest paid employee in this group, the Facilities Maintenance Assistant, is required to be engaged in coursework leading to a certification. The record does not indicate that “P” employees are required to have any such specialized training or experience.

The difference in skill levels indicates a lack of interchange as well as a disparity in pay levels. There is no suggestion in the record that production employees perform the sort of maintenance work engaged in by the “M” employees or vice-versa. They may perform simple maintenance functions that do not require specialized training or experience. There is no evidence, however, that “P” employees do anything beyond that. With respect to pay ratios, the “M” classifications are grouped at the top end of the spectrum while the “P” employees are at the bottom.

¹¹ Furthermore, the record fails to establish that the work performed by the Housekeeping and Sanitation employees is at all akin to that done by the “M” employees. They engage in the menial, unskilled cleaning chores that are not comparable to the skilled and semi-skilled tasks engaged in by the “M” employees. This distinction, no doubt, along with significant disparities in wage levels, is the reason why the Employer categorized the Housekeeping and Sanitation employees in the “P” group.

Record evidence, moreover, does not establish that much interaction takes place between “M” and “P” employees. As noted above, “M” employees are generally based in their own separate building in the facility. While they install, repair and maintain the machines that are worked on by “P” employees, this does not require a conclusion that any significant contact occurs in the process. Indeed, as noted above, metrology employees, for example, are directed to minimize interference with the production process thus reducing the opportunity for contact. Furthermore, the record lacks any suggestion that the work of the “P” and “M” employees is integrated. The Employer cannot even use the batch record process here as an indication of integration since maintenance employees do not make entries on those documents.

There are other notable differences. While “P” employees work established shifts, many of the “M” employees may be subject to sudden changes in their schedules depending on maintenance needs. Also, quite a few of them wear beepers, respond to emergency calls and must be available on a 24 hour a day basis to perform work. Both “P” and “M” employees wear uniforms but they are of a different color.

The foregoing facts demonstrate that whatever community of interest that might exist between “P” and “M” employees is not overwhelming. Given the Petitioner’s lack of desire to represent the “M” employees, no basis exists for compelling their inclusion in the unit found appropriate herein. **Lundy Packing Company, Inc., supra.**

Pertinent to this conclusion is that the group at issue, “M” employees, standing alone, may very well constitute an appropriate unit for purposes of collective bargaining. The Board has long held that separate maintenance departments are appropriate units in the absence of a more comprehensive bargaining history and if the facts demonstrate a sufficient community of interest. **American Cyanamid Co., 131 NLRB 909 (1961).** Even in cases like that here, where

there has been some shared interest, the Board has approved separate maintenance-only units. See, **Ore-Ida Foods, Inc.**, 313 NLRB 1016 (1994). With the existence of factors in the instant case that suggest the appropriateness of a separate maintenance unit, significant weight is added to the conclusion that the production employees can appropriately comprise a unit without them.

I therefore find that the evidence does not establish a sufficient community of interest to compel the inclusion of the “M” employees in the petitioned-for unit over the objections of the Petitioner.

THE ‘A’ EMPLOYEES

1. Materials Management

The positions at issue in this department are the Inventory Control Clerk, Inventory Control Planner and the Product Coordinators. These employees have been labeled as “A” or administrative by the Employer with respect to wage levels. They are based on the third floor of the South Building in an office area that is removed from the production areas. Materials Management employees do not typically move inventory but rather are engaged in accounting for it. They have their own separate supervisor who answers directly to the Vice-President for Operations.

The Inventory Control Clerk is responsible for assigning lot numbers to raw materials received and distributes lot records to various departments for further processing. Among their other duties, these employees coordinate monthly inventories, fax receipt acknowledgments for customer supplied material, prepare shipping documentation as requested for miscellaneous shipments, and coordinate the requisitioning process with warehousing for cardboard packaging. The job qualifications include one year of word processing experience, six months of spreadsheet experience, six months of inventory/bookkeeping and six months of shipping

background. After hire, up to two years of in house specialized training takes place. This position receives a minimum of 100% of the base wage rate, placing him or her above 12 different “P” classifications.

Like the Inventory Control Clerk, the Inventory Control Planner, according to the Employer’s job description,” works regularly under desirable conditions of the office setting.” His or her job “requires limited physical activity.” The Inventory Control Planner performs liaison duties between Scheduling, Inventory Control, Contract Services, Purchasing and Manufacturing Operations. Along with the Inventory Control Clerks, the primary responsibility of this job, as described by Beverly Welsh, is to assure that the materials are there to meet the requirements of the production schedule. Job qualifications for this position include business education coursework, familiarity with word processing and spreadsheets, experience with MRP II systems and a minimum of two years of experience in production/inventory control, expediting and material control. The Inventory Control Planner earns a minimum of 110% of the base wage rate.

According to their job description, Project Coordinators compose, type, copy, distribute and file internal and external correspondence using WordPerfect 5.1. They prepare a ‘fill to ship” report for the first week of each month on the Paradox database and revise it weekly. They schedule meetings with managers, supervisors, directors and the Vice-President of Operations in order to establish month priorities. These employees follow up with Packaging, Quality Control, Documentation and Shipping regarding product to be shipped and assure that all paperwork for shipping is ready. Additionally, they prepare monthly sales forecasts and monitor sales on a weekly basis, submitting such to the Vice-President of Operations. These employees receive a minimum wage rate that is 113% of the base.

In arguing for the inclusion of Materials Management employees in the proposed unit, the Employer asserts that they are a “link” between the inventory as it arrives into the warehouse and the production process. It further claims that these employees interact with warehousing, packaging and shipping employees, all of whom are included in the petitioned-for unit. The record, however, establishes little direct contact or integration between these groups of employees. The Materials Management employees are primarily office workers who perform intellectual labor. Their physical activity mostly involves using the computer or the calculator although, at times, they may have to move materials while taking inventory. Thus, there is a wide gap in the nature of their work and the actual physical moving of goods and materials which comprises the work of the warehouse, packaging and shipping employees. The record is lacking, moreover, of any evidence of interchange of jobs and fails to specify the nature of any interaction if there is any.¹² Indeed, the job description for these positions suggests more interaction with customers and managers than with “P” employees.

Based upon the foregoing, I am compelled to include that there is little if any community of interest between Materials Management employees and those in the petitioned-for unit. They may be paid hourly and subject to the same employment policies and employee benefits. However, they do not share common supervision, work in different parts of the facility, have minimal interaction and no interchange, and perform work that is wholly different in nature. On this basis, I shall not require that they be included in the petitioned-for unit.

2. Documentation

The Employer is particularly adamant that these employees must be included in the unit inasmuch as I directed their inclusion in a prior representation case. According to the Employer,

¹² The only possible interaction is suggested by the presence of Materials Management employees on

none of the operative facts concerning these employees has changed since that time. Therefore, the Employer maintains, I have no choice but to include them again. The Petitioner, on the contrary, submits that there have been significant changes with respect to this group. It also asserts that since the “M”, “T” and “A” employees have not been included in the petitioned-for unit, the logic behind including Documentation in the last election case no longer exists.

The positions in Documentation are Documentation Auditors, Technical Writers and Senior Technical Writer. The Employer has classified these positions as being in the “A” category. Their primary function, according to the Employer, is to gather information to “ensure that the batch records are complete, accurate, and in compliance with FDA regulations.” The Employer states that in meeting this responsibility, Documentation employees are required to go into production areas and to meet with production employees.

In deciding to include these employees in the prior representation case, certain key fact were considered. The prior record established that Documentation employees were not required to hold college degrees and that most if not all of them had come from the ranks of production employees. In addition, the evidence demonstrated that Documentation spent a full 25% of their time in the production areas working alongside “P” employees and, at times, filling in for them.

The record in the instant case shows that all of that has changed since the prior matter was heard. Thus, Beverly Welsh acknowledged in her testimony that Documentation employees are now required to have four-year college degrees. As a result, the record indicates that the employees hired since this new qualification was imposed have not come from production departments. She also noted that Documentation employees no longer spend 25% of their time working in the production areas. This was confirmed by the production workers who testified at

occasion in production areas. It is not clear if any significant contact takes place during those occasions.

the hearing. They uniformly stated that any contact with Documentation was rare and, if at all, for only a few minutes, in the Documentation office, while they corrected a problem on a batch record. There was no suggestion in the instant record that Documentation employees continue to fill in occasionally for production workers.

I would not hesitate to include the Documentation employees in the petitioned-for unit if the conditions still existed that caused me to include them in the prior representation case. However, it is evident that significant changes have occurred. The facts that I previously relied upon have changed. The very factors that served to create a community of interest with production workers no longer exist. As a result, I cannot merely include the Documentation employees based upon their inclusion in the prior representation case.

In addition, I find no other evidence in the record that would compel their inclusion. Their job descriptions reveal that they are essentially office employees whose work is intellectual in nature and who have minimal, if any, interaction with production employees. Documentation has its own supervisor who answers directly to the Associate Director of Quality Operations, the same person who oversees Quality Assurance and Process Validation. They work in an area remote from production departments. Their wage rates range between 113% and 123% of base, well in excess of most "P" positions.

Based upon the foregoing and especially in light of the Petitioner's unwillingness to represent them, I shall not compel the inclusion of the Documentation employees in the unit found appropriate herein.¹³

¹³ There are several job classifications cited in the record exhibits for which little if any record evidence was developed. Two of those, Production Documentation and Lab Assistant, respectively labeled by the Employer as "P" and "T" positions, were not included in the petitioned-for unit by the Petitioner and there exists insufficient evidence on the record to decide otherwise. I therefore shall not include them. Another classification, Waste Material Handler, was labeled as "P" by the Employer but placed with the

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Chemical Workers Union Council/United Food & Commercial Workers International Union**.

LIST OF VOTERS

excluded employees in its prepared exhibit. No evidence was adduced at hearing as to why this position should be excluded and, since the Petitioner seeks inclusion, I find that this classification should be eligible to vote. Finally, in its prepared exhibit, the Employer has listed as included in the unit an "A" employee known as the Packaging Coordinator. The Petitioner seeks her exclusion claiming she is an office clerical employee. The record, however, establishes that the Packaging Coordinator works in the packaging Department and that her primary function is to produce paperwork and labels for trays used in the packaging process. Although she wears a lab coat, answers the department phone and has a computer, her work seems fully integrated with the packaging process engaged in by "P" employees. I shall therefore include her in the unit.

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, by **August 27, 1999**.

Dated at Cleveland, Ohio this 13th day of August 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

420-2900-2901
420-4633